

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 17

WCC No. 2000-0207

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DEBRA STAVENJORD

Petitioner

vs.

MONTANA STATE FUND

Respondent

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ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION

**Summary:** Respondent moved for reconsideration of this Court's Order Regarding Identification and Notification of Potential Beneficiaries, arguing that since the Court found its process to be "well thought-out and reasonable," it was not impracticable or impossible for the identification and notification procedure to commence without common fund counsel and therefore this Court should reconsider its determination that it could not comply with the Montana Supreme Court's remand order to that effect.

**Held:** The Court determined as a threshold issue that it was impossible to determine an acceptable identification and notification procedure for potential *Stavenjord* beneficiaries since, without common fund status, the Court has no jurisdiction to order non-party insurers to comply with the procedure. Therefore, irrespective of the fact that Respondent's proposed procedure appears to the Court to be "well thought-out and reasonable," the Court is unable to comply with the Supreme Court's directive on remand until such time as the Supreme Court clarifies whether the term "potential Stavenjord beneficiaries" is limited to **only** those claimants whose employer was insured by Respondent. Motion for reconsideration is therefore denied.

BACKGROUND

¶ 1 Respondent moves this Court for reconsideration of its Order Regarding Identification and Notification of Potential Beneficiaries.<sup>1</sup> Respondent's motion is denied for the reasons set forth below.

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<sup>1</sup> 2008 MTWCC 4 (Order).

¶ 2 Briefly stated, in *Stavenjord II*,<sup>2</sup> the Montana Supreme Court concluded that previous litigation in this case<sup>3</sup> did not create a common fund. The Supreme Court then remanded the matter back to this Court to determine an appropriate procedure by which “potential *Stavenjord* beneficiaries” would be identified and notified of their interests related to increased *Stavenjord*-type benefits. Upon rehearing of the matter, the Supreme Court further directed this Court to determine whether it would be impracticable or impossible to comply with its remand order in *Stavenjord II* without the assistance of a common fund counsel.<sup>4</sup> In this Court’s Order, while considering Respondent’s proposed identification and notification process and commending Respondent for its thorough and well-thought-out proposal, I ultimately concluded that since potential *Stavenjord* beneficiaries included claimants not insured by Respondent, and since this Court would have no jurisdiction over any procedure for identifying and notifying those potential beneficiaries, it would be impossible for this Court to determine an appropriate procedure by which potential *Stavenjord* beneficiaries would be identified and notified of their interests related to increased *Stavenjord*-type benefits.<sup>5</sup> In reaching my decision, I further noted, “I question whether, as the matter presently stands, this Court has the jurisdiction to order State Fund to undertake an identification and notification procedure since, with no adversarial party remaining, there is no case or controversy before me.”<sup>6</sup>

¶ 3 In requesting reconsideration of this Court’s Order,<sup>7</sup> Respondent argues that while it agrees the Court has no jurisdiction to order other insurers to comply with any identification and notification procedures for potential *Stavenjord* beneficiaries, Respondent has proposed a process which met with the approval of the Court and it should be allowed to move forward with the notification and identification. In support of its position, Respondent quotes from this Court’s Order:

It was obvious to me that State Fund expended considerable effort in arriving at a procedure to identify potential *Stavenjord* beneficiaries. If my duty was to determine an appropriate procedure by which potential *Stavenjord* beneficiaries **insured by State Fund** were to be identified and notified, then State Fund has set forth a procedure which appeared to be well thought-out and reasonable.<sup>8</sup>

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<sup>2</sup> *Stavenjord v. Montana State Fund*, 2006 MT 257, 334 Mont. 117, 146 P.3d 724 (*Stavenjord II*).

<sup>3</sup> See *Stavenjord v. Montana State Fund*, 2003 MT 67, 314 Mont. 466, 67 P.3d 229 (*Stavenjord I*).

<sup>4</sup> *Stavenjord v. Montana State Fund*, Order Denying Rehearing, No. 04-737, 11/09/06.

<sup>5</sup> Order, ¶ 14.

<sup>6</sup> Order, ¶ 13.

<sup>7</sup> State Fund’s Petition for Reconsideration, Docket Item No. 115.

<sup>8</sup> Order, ¶ 12 (emphasis in original).

¶ 4 Respondent argues that since I found it had determined an appropriate procedure, I should reconsider my Order in this case and approve Respondent's identification and notification procedure. However, the language Respondent relies upon above was not a holding that Respondent's proposed procedure was being approved. Rather, it was an acknowledgment that, based on the information before the Court, I could not find a flaw in the procedure Respondent set forth.

¶ 5 Regardless of my assessment of the procedure set forth by Respondent, ultimately I could not – and still cannot – approve Respondent's proposed procedure because to do so presupposes that the Supreme Court intended “potential *Stavenjord* beneficiaries” to constitute only those claimants for whom Respondent was liable. As I noted in my previous Order on this matter, I doubt this was the Supreme Court's intention.<sup>9</sup> Therefore, unless and until the Supreme Court advises this Court that “potential *Stavenjord* beneficiaries” is to include only Montana State Fund claimants, and that notwithstanding the Supreme Court's holding that *Stavenjord* is not a common fund, this Court nevertheless has jurisdiction to oversee the process, the fact that I found Respondent's process to appear to be “well thought-out and reasonable” is dicta.

#### CONCLUSION

¶ 6 Respondent's motion for reconsideration is **DENIED**.

¶ 7 Consistent with the Supreme Court's order denying *Stavenjord*'s petition for rehearing, this Order is amenable to review on appeal.

DATED in Helena, Montana, this 24<sup>th</sup> day of April, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Parties of Record Via Website

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<sup>9</sup> Order, ¶ 10.